

BACKGROUND AND OPTIONS FOR STATUTORY APPROPRIATIONS

A Report Prepared for the
Legislative Finance Committee
Subcommittee on Budget and Appropriation Processes

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Legislative Fiscal Division



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PURPOSE

There is no formalized review or prioritization process for statutory appropriations like there is for temporary appropriations such as those in HB 2. With nearly half a billion dollars spent annually through 99 statutory appropriations and more added each legislative session, the Legislative Finance Committee (LFC) accepted staff's work plan suggestion to inventory and assess statutory appropriations. The study was assigned to the LFC subcommittee on budget and appropriation processes.

This report provides reference information on statutory appropriations to the LFC subcommittee. The material provides the committee with a basic understanding of the definition, history, purpose, laws, and characteristics of statutory appropriations. Various options for addressing statutory appropriations are presented for the subcommittee's consideration in directing staff on how to proceed.

WHAT ARE STATUTORY APPROPRIATIONS?

A statutory appropriation is a special kind of legislative appropriation. By statutory definition it is "an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment". Unlike temporary appropriations that expire in two years (such as those in the general appropriations act), statutory appropriations are, as their name suggests, in statute and are not part of the biennial budgeting process. As such, they are not automatically reviewed by the legislature, are not subject to the priority setting process like temporary appropriations (such as those in HB 2), and tend to be overlooked in the budgeting process. Since the appropriations are in statute, they remain in place until removed or changed by legislation. To some legislators they seem tucked away, hidden, and forgotten. Over the years, efforts have been made to find and review them.

HISTORY

Prior to 1985, the appropriation of funds in statute had been practiced for many years but had been ambiguous, inconsistent, and open to various differing interpretations. The traceable history of "valid" statutory appropriations is relatively short. The first attempt to clarify the practice of providing for statutory appropriations was enacted in 1985 by House Bill 12. This bill, by request of the LFC and sponsored by Representative Bardanouve, clarified the laws relating to appropriations by defining and establishing the requisites for valid continuing statutory appropriations. The law requires that a valid statutory appropriation must be contained in the list of statutory appropriations in section 17-7-502, MCA, and that the law making the statutory appropriation must state that it is made under that section. The law clarified all the funds and programs, up to that time, that had statutory appropriation authority and these were made to comply with the requisites. In addition, a statutory appropriation was established under section 17-7-502, MCA, to pay the principal, interest, premiums, and costs of issuing, paying and securing all bonds, notes, or other obligations.

Attempts for further clarification and elimination of statutory appropriations occurred in subsequent sessions. House Bill 583, enacted by the 1989 legislature, clarified that administrative costs were not to be statutorily appropriated by including language for specific appropriations that stated "expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations..." and, for some appropriations, excepted "funds used for administration of a program". In 1993, Senator Grosfield successfully sponsored legislation (SB 378) that required a review of all statutory appropriations every two years by the LFC. This requirement was removed by the 2001 legislature. Senate Bill 83, enacted by the

1995 legislature, by request of the LFC following its review required by SB 378, eliminated 13 statutory appropriations and replaced them with temporary appropriations in the general appropriations act. The underlying premise for elimination of most of these statutory appropriations was that a continuing and reliable source of revenue was being used to fund administrative costs of state government and, therefore, the funds could be appropriated in the general appropriations act. Statutory appropriations are intended for only limited situations, and guidelines for the appropriateness of establishing them are specified in 17-1-508, MCA.

ADVANTAGES AND DISADVANTAGES

Some advantages of statutory appropriations are:

1. Unpredictable revenue source - The legislature may earmark a revenue source for a specific purpose but, recognizing that the amount of revenue may vary considerably due to unpredictable events, statutorily appropriate either all or a portion of the money that is received. In doing so, the legislature does not have to include a highly uncertain appropriation amount in the general appropriations act each session that may not be enough in some years and may be too much in others. Often, the occurrence of the event provides the revenue that is appropriated and used. An example would be the statutory appropriation in 44-12-206, MCA, of revenue received by the Department of Justice from the sale of seized or forfeited property.
2. Reoccurring obligations - Due to actions of past (and future) legislatures, obligations to pay may have been (will be) incurred. Recognizing this, the legislature has statutorily appropriated the funding needed to pay off the costs of the obligations rather than budgeting for them each session. An example would be the statutory appropriation in 17-7-502, MCA, to "pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana."
3. Unpredictable events/costs - Recognizing that certain unpredictable events may occur which would require payment of an expense determined justifiable by the legislature in advance of the event itself, the legislature appropriates funding needed to pay that expense if it is incurred, sometimes up to a maximum amount. An example would be the \$16 million general fund appropriation to the governor's office for disaster or emergency payments (10-3-312, MCA).

Some disadvantages of statutory appropriations are:

1. No legislative review and prioritization - Once established, statutory appropriations remain in law until the statute is amended or repealed. Unlike temporary appropriations that must be renewed and the funds prioritized by the legislature each session, statutory appropriations do not automatically receive this periodic legislative review or prioritization. Policies and programs important to past legislatures, who may have had different priorities or who assigned different importance to programs than the current legislature, are set in statute and do not come under the same intense legislative scrutiny as programs funded with temporary appropriations. The earmarked revenue and programs tend to remain unprioritized by future legislatures, even though circumstances may have changed since the statutory appropriation was established.
2. Program expansion - If a program has a statutory appropriation to spend all the money from a particular revenue source, the program has the authority to spend all the revenue available to it and is only limited by the amount of revenue received. If the revenue increases, the program could expand at the same rate without legislative oversight or approval of the expansion. In contrast, programs that receive a temporary appropriation are limited by the amount appropriated or the amount of revenue received, whichever is less.
3. Budget comparisons and expenditure limitation - Since some statutory appropriation amounts can not be easily predicted, the true size of the state's budget can not be predicted with accuracy. For the LFD's Legislative Budget Analysis and Legislative Fiscal Report, analyses are provided on comparison of expenditures and projected expenditures between biennia. However, statutory appropriation totals are

not included since the projected expenditure amounts for the upcoming biennium are unknown (however, general fund estimates are shown).

INTENT, CRITERIA, REVIEW, REQUIREMENTS

The legislature, in recognizing the unique nature and disadvantages of statutory appropriations, statutory expressed its intent in 17-5-501, MCA that statutory appropriations:

- reflect present circumstances and legislative priorities for state spending
- are terminated when they are no longer necessary or appropriate
- are subject to the same legislative scrutiny as other appropriations

This seems to imply that statutory appropriations should be given equal legislative time as temporary appropriations.

In 17-1-508, MCA, the legislature placed the requirement on itself to consider the following criteria when reviewing and establishing statutory appropriations. A statutory appropriation may be appropriate if:

- the fund or use requires an appropriation
- the money is not from a continuing, reliable, and estimable source
- the use of the appropriation or the expenditure occurrence is not predictable and reliable
- the authority does not exist elsewhere
- an alternative appropriation method is not available, practical, or effective
- other than for emergency purposes, it does not appropriate money from the state general fund
- the money is dedicated for a specific use
- the legislature wishes the activity to be funded on a continual basis
- when feasible, an expenditure cap and sunset date are included

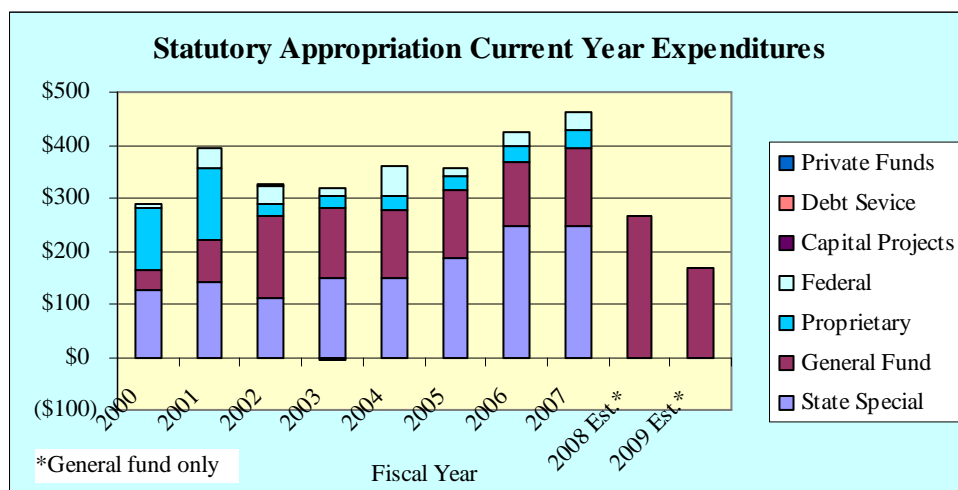
This section also states that a statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. It also requires the Office of Budget and Program Planning (OBPP) to prepare fiscal notes for legislation that would create or amend a statutory appropriation and to review the legislation according to the above criteria.

The legislature also requires the OBPP, in development of the executive budget, to review and identify statutory appropriations in current law that do not appear consistent with the above criteria. In 17-7-111(3)(a), MCA, the legislature requires the budget director to include a consolidated agency budget summary of statutorily appropriated funds. In 17-7-151, MCA, the OBPP and the Legislative Fiscal Division are required to use the same methodology for estimating amounts of statutory appropriations when making budget comparisons. The OBPP does not publish these comparisons.

HISTORICAL EXPENDITURES

From FY 2000 through 2007, total current year expenditures from statutory appropriations increased 61 percent. General fund expenditures increased 273 percent over the same time and state special expenditures increased 97 percent. Figure 1 below shows total statutory appropriation expenditures by the various types of funds. For comparison, total appropriations in HB 2 grew 38 percent over this same time. General fund HB 2 appropriations increased 29 percent and state special appropriations increased 30 percent. General fund statutory appropriation expenditures for FY 2008 to 2009 are estimated to be \$265.0 million and \$167.1 million, respectively, higher than any other previous years. Because only general fund statutory appropriations are estimated for the 2009 biennium, estimates for other funds are not shown.

Figure 1



Attachment 1 at the end of this report shows the statutory references for all valid statutory appropriations during the 2009 biennium, a brief description of each, and the source of revenue being appropriated.

WHAT TO DO?

The following are various options presented for the subcommittee's consideration:

1. Implement a complete study of all statutory appropriations, either statutorily or in the LFD workplan, similar to that done in the 1995, 1997, 1999 and 2001 biennia as directed by SB 378 (1993 legislature)
 - a. Do this biennially; or
 - b. Do this every other biennium;
2. Explore options for limited review of statutory appropriations during the legislature's appropriations subcommittee process;
3. Require the LFD to rank all statutory appropriations based on certain criteria (examples are given below) and, based on the criteria, bring certain ones to the LFC for a discussion of their appropriateness. This could be done periodically, i.e. every biennium, every other biennium, etc.
 - a. Fund – i.e. general fund, state special, etc.;
 - b. Amount of expenditures – i.e. large, medium, small, >\$500,000, <\$100,000; etc.
 - c. Statutory criteria – i.e. meets 3 of the 9 criteria; etc.
 - d. Age – i.e. those enacted 10 or more years ago, or new ones enacted in the previous session; etc.
 - e. Staff discretion – i.e. never used, could be consolidated, duplicate, etc.; or
 - f. Revenue source – i.e. all taxes, all fees, growing or declining revenue source, etc.; or
4. If the subcommittee is satisfied with the current statutory appropriation situation, no action is needed.

Regardless of the direction taken by the subcommittee, LFD management plans to include more detailed information on all statutory appropriations in the biennial LFD Legislative Budget Analysis.

Attachment 1

Current Statutory Appropriations

Legislative Fiscal Division

Statutory Appropriation System

MCA Listing

St.	MCA	Name	Revenue Source
A	10-1-1202	National Guard death benefit	General Fund
A	10-1-1303	MT military family relief	Tax check off, donations
A	10-2-603	State veterans' cemeteries	GF transfers, donations
A	10-3-203	Federal \$ for disasters and fire suppression	Federal disaster payments
A	10-3-310	Local incidence response by the state	General Fund
A	10-3-312 A	Governor declared emergency/disaster	General Fund
A	10-3-312 B	Disaster declared by the president-family programs	General Fund
A	10-3-314	Presidential declared major disaster in MT	Federal loan proceeds
A	10-4-301	Reimburse telephone companies for 911 costs	Telephone access fee
A	15-1-111	Reduced property tax reimbursement	General Fund
A	15-1-121	Local government entitlements	General Fund
A	15-1-218	Dept. of Revenue out-of-state tax collections	General Fund
A	15-23-706	Redistribution of coal gross proceeds	Coal gross proceeds taxes
A	15-31-906	State-certified movie production income tax credits	Application fee
A	15-35-108	Coal tax earnings for economic development	General Fund
A	15-36-332	Distribute O&G production taxes to eligible counties	Oil and gas production taxes
A	15-37-117	Distribution to counties impacted by mining	Metalliferous mines license taxes
A	15-39-110	Bentonite tax distribution to eligible counties	Bentonite taxes
A	15-65-121	Tourism promotion and related activities	Lodging facilities use taxes
A	15-70-101	Fuel taxes to local govt. for road work	Fuel taxes
A	15-70-369	Biodiesel fuel tax refund	General Fund
A	15-70-601	Tax incentive for biodiesel producers	General Fund
A	16-11-509	Recoveries from tobacco settlement litigation	General Fund
A	17-3-106	Reimbursement of federal funds and interest	General Fund
A	17-3-212	Federal forest \$ to eligible counties	Federal forest reserve funds
A	17-3-222	Taylor grazing \$ to eligible counties	Federal taylor grazing act funds
A	17-3-241	US royalty to eligible counties from mineral account	U.S. mineral royalty revenue
A	17-6-101	Bd. of Investment contracted banking services	General Fund
A	17-7-304	MUS deferred maintenance & equipment	Reversions of appropriated money
A	17-7-502	Debt service payments & issuing costs	General fund & various agency funds

Legislative Fiscal Division

Statutory Appropriation System

MCA Listing

St.	MCA	Name	Revenue Source
A	18-11-112	Tribal reimbursements and DOR administration	Alcohol, tobacco & cigarette taxes
A	19-13-604	MT firefighters' unified retirement	General Fund
A	19-17-301	Volunteer firefighters' retirement	General Fund
A	19-18-512	Local firefighters' retirement	General Fund
A	19-19-305	Other municipal police retirement	General Fund
A	19-19-506	Other municipal police supplemental retirement	General Fund
A	19-20-604	Teachers' retirement	General Fund
A	19-20-607	Supplemental teachers' retirement	General Fund
A	19-21-203	MUS optional retirement	General Fund
A	19-3-319	Local government & school employee retirement	General Fund
A	19-6-404	Highway Patrol retirement	General Fund
A	19-6-410	Supplemental Highway Patrol retirement	General Fund
A	19-9-702	Municipal police retirement	General Fund
A	20-26-1503	Pay debt and costs of rural physician incentive program	Bd of Regents medical student fees
A	20-8-107	Deaf & blind school for educational purposes	Out-of-state institution payments
A	20-9-534	School technology purchases	Common school trust timber revenue
A	20-9-622	School equalization from the guarantee account	Common school trust I & I
A	2-17-105	State building damage repair	Insurance proceeds
A	22-3-1004	Purchase, maintain & operate historic properties	Lodging taxes, vehicle & gate fees,federal
A	23-4-105	For the good of the existing horseracing industry	Percent of wagered amounts
A	23-4-202	For the good of the existing horseracing industry	Percent of wagered amounts
A	23-4-204	For the good of the existing horseracing industry	Percent of wagered amounts
A	23-4-302	For the good of the existing horseracing industry	Percent of wagered amounts
A	23-4-304	For the good of the existing horseracing industry	Percent of wagered amounts
A	23-5-306	Card table fees to local governments	Live card game table permit fee
A	23-5-409	Keno & bingo taxes to local governments	Keno & bingo gross proceeds tax
A	23-5-612	Video gambling permit fee to local governments	Video gambling machine permit fee
A	23-7-301	Lottery sales agents commission	Lottery enterprise fund
A	23-7-402	Pay out of lottery winnings	Lottery enterprise fund
A	37-43-204	Remedy defects in water wells	Water well contractor's bond

Legislative Fiscal Division

Statutory Appropriation System

MCA Listing

St.	MCA	Name	Revenue Source
A	37-51-501	Pay real estate claims for unsatisfied judgments	Real estate licensee assessment
A	39-71-503	Payment of uninsured benefits	Uninsured employers' fund
A	41-5-2011	Youth court intervention and prevention	Transfers of money & unspent money
A	42-2-105	Adoption services	Fees for service, GF transfer
A	44-12-206	Enforcement of drug laws	Sale of seized or forfeited property
A	44-13-102	Support of state and local law enforcement program	Federal property and money forfeited
A	44-1-504	Partially fund highway patrol officers' salaries	\$5 motor vehicle registration fee
A	50-4-623	Administration of health and cost management plans	Certificate of public advantage fee
A	5-11-120	Legislative branch retirement termination	One-time GF transfer
A	5-11-407	Major Leg. information technology projects	Feed bill & carry forward
A	5-13-403	LAD audits	Agency payments for audits
A	53-1-109	For needs of the prison inmates & their families	Sale of goods & contraband, other
A	53-24-108	Grants for private or public alcoholism programs	% of liquor, beer, wine taxes
A	53-24-108	Treatment of mental illness & chemical dependency	% of liquor, beer, wine taxes
A	53-24-206	To counties for chemical dependency programs	Unappropriated liquor, beer, wine taxes
A	53-6-703	Defray managed care application review cost	Managed care application review fee
A	60-11-115	Railroad & intermodal transportation facility loans	Fed \$, bonds, loan repayments, interest
A	61-3-415	Grant wishes to chronically or critically ill children	Special motorcycle license plate
A	69-3-870	Administer telecom performance assurance plans	Performance assurance plan revenue
A	7-4-2502	County attorney salaries	General Fund
A	75-1-1101	Contingency to address environmental problems	Portion of RIT interest earnings
A	75-11-313	Petroleum tank release cleanup	Fuel taxes
A	75-5-1108	Loans for water pollution control	Federal funds, transfers, bond proceeds
A	75-6-214	Financial assistance to public water systems	Federal funds, transfers, bond proceeds
A	76-13-150	Pay fire suppression costs	General fund transfer
A	77-1-108	Administer Morrill Act land grant	Transfer of general fund
A	77-2-362	Land banking-transaction costs and trust land purchase	Sale proceeds of state trust land
A	80-11-518	Ag. commodity research & market development	Commodity assessments, penalties
A	80-2-222	Hail insurance except administration	All board of hail insurance funds
A	80-4-416	Administration of agricultural commodities	Commodity liquidations, deficiency fees

Legislative Fiscal Division

Statutory Appropriation System

MCA Listing

St.	MCA	Name	Revenue Source
A	80-5-510	Administer agricultural seed dispute resolutions	Filing fees and reimbursed costs
A	82-11-161	Oil and gas production damage mitigation	RIT interest, forfeited bonds
A	87-1-513	Grants to the Montana food bank network	Proceeds from sale of seized game meat
A	90-1-115 A	Support projects related to Lewis and Clark	L & C bicentennial license plate sales
A	90-1-115 B	Support projects related to Lewis and Clark	L & C bicentennial license plate sales
A	90-1-205	Assist economic development in Montana	Big sky coal trust fund earnings
A	90-3-1003	Fund research and commercialization projects	GF transfer of coal trust earnings
A	90-9-306	Fund ag. development & research projects	Loan repayments, grants, donations
A	Uncodified	\$400 one-time tax rebate	General Fund